

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

OSVALDINA LIMA,

Plaintiff,

v.

WACHOVIA MORTGAGE
CORPORATION, aka Wachovia
Mortgage Federal Savings Bank, a
Delaware Corporation, CAL-
WESTERN RECONVEYANCE
CORPORATION, a California
Corporation, and DOES 1 through 20,

Defendants.

NO. C09-04798 TEH

TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE

The Court is in receipt of the Ex Parte Motion for Temporary Restraining Order and Order to Show Cause Why Preliminary Injunction Should Not Issue (“Motion”), filed by Plaintiff Osvaldina Lima (“Plaintiff”) on October 8, 2009. Plaintiff alleges in her Complaint, filed concurrently with the Motion, that on July 7, 2005, she obtained a loan secured by a Deed of Trust from World Savings Bank, now Wachovia Mortgage Corporation aka Wachovia Mortgage Federal Savings Bank (“Wachovia”), for a four-plex apartment located at 2540 26th Avenue in Oakland, California, recorded in the Alameda County Recorder’s Office as document 2005281949 (the “Property”). On June 18, 2009, the Cal-Western Reconveyance Corporation (“Cal-Western”) recorded a Notice of Default for the Deed of

1 Trust. Cal-Western subsequently recorded a Notice of Trustee's Sale, notifying Plaintiff that
2 the Property would be sold at public auction on October 13, 2009, at 12:00pm. Plaintiff
3 alleges that a loan audit prepared on October 7, 2009, identified two presumptive violations
4 of the Truth in Lending Act and other potential violations. Plaintiff asserts she sent a
5 qualified written request to Wachovia and Cal-Western (collectively, "Defendants"),
6 pursuant to 12 U.S.C. § 2605(e)(2), requesting a copy of the complete loan file and resolution
7 of the issues within 60 days of receipt of the request. The Court finds that, absent the
8 issuance of a temporary restraining order enjoining the Trustee's Sale, Plaintiff will suffer
9 irreparable harm as the foreclosure sale would otherwise proceed and Plaintiff could lose her
10 property as a result.

11 Good cause appearing, Defendants, and all persons acting by, through, or under them
12 are hereby ENJOINED AND RESTRAINED from conducting any trustee sale of the
13 property commonly known as 2540 26th Avenue in Oakland, California, recorded in the
14 Alameda County Recorder's Office as document 2005281949, and described as follows,

15 Parcel one:

16 A portion of lot 7, a portion of the Shuey Estate, filed March 24, 1884, in book
17 7, page 63, of maps, Alameda County records, described as follows:

18 Beginning at a point on the southeastern line of 26th, formerly Shuey Avenue,
19 distant thereon. South 35degrees west 398.70 feet from the southwestern line of
20 East 27th Street, formerly Huff Avenue, as said avenues are shown on said
21 map; and running thence along said line of 26th Avenue south 35 degrees west
43.70 feet; thence south 55 degrees 35' east 115 feet; thence north 35 degrees
east 43.70 feet; thence north 55 degrees 35' west 115 feet, to the point of
beginning.

22 Parcel two:

23 An easement for driveway purposes, as created by deed from Charles D. Lyon,
24 et. ux, recorded January 7, 1948, in book 5368, pages 267 and 269,
25 respectively; from Title Insurance and Trust Company, recorded June 3, 1969,
26 reel 2414, image 179, official records and recorded August 1, 1969, reel 2452,
image 300, official records and from Alberta Lyon, et. al., recorded April 29,
1959, in book 8999, page 67, official records, appurtenant to parcel one above,
over and along the property described as follows:

27 Beginning at a point on the southeastern line of 26th Avenue, distant thereon
28 north 35 degrees east 296.49 feet from the northeastern line of 25th Street; and

1 running thence along said line of 26th Avenue north 35 degrees east 15 feet;
2 thence south 55 degrees 35' east 122 feet; thence south 35 degrees west 32.50
3 feet; thence north 55 degrees 35' west 22 feet; thence north 35 degrees east
17.50 feet; and thence north 55 degrees 35' west 100 feet to the point of
beginning.

4 APN no 026-0771-011-08,

5 until such time as a hearing may be held on this Order to Show Cause why a preliminary
6 injunction enjoining such trustee sale for at least 60 days should not issue.

7 The Court also ORDERS that Defendants appear and show cause why a preliminary
8 injunction should not issue pursuant to Federal Rule of Civil Procedure 65(b) further
9 enjoining any such trustee sale for at least 60 days. The hearing on the preliminary
10 injunction is set for **Thursday, October 22, 2009, at 3:00 pm**, in Courtroom 12, 19th Floor,
11 United States District Court, Northern District of California, Federal Building, 450 Golden
12 Gate Avenue, San Francisco, California 94102.

13 The Court ORDERS Plaintiff to serve a copy of this Order upon Defendants along
14 with a copy of her motion for preliminary injunction and file proof with this court of such
15 service on or before **Friday, October 9, 2009**. Defendants shall file and serve their
16 opposition, if any, to the motion for preliminary injunction on or before **Thursday,**
17 **October 15, 2009**. Plaintiff shall file and serve her reply memorandum, if any, on or before
18 **Monday, October 19, 2009**.

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20 **IT IS SO ORDERED.**

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24 Dated: 10/08/09



THELTON E. HENDERSON, JUDGE
UNITED STATES DISTRICT COURT